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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Factors that impede equal political participation and steps to overcome those challenges

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

This study examines the human rights framework relating to participation in political and public affairs. Discrimination against women, indigenous peoples, minorities, persons with disabilities, human rights defenders and other marginalized groups may prevent the full, effective and equal enjoyment of the rights to participate in political and public affairs. The study identifies some of the major barriers to equal participation and makes recommendations concerning measures that could be taken to overcome these challenges.

* The footnotes to the present report are circulated as received, in the language of submission only.

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I. Introduction

1. In paragraph six of its resolution 24/8, the Human Rights Council requested that the Office of the High Commissioner for Human Rights prepare a study on factors that impede equal political participation and on steps to overcome these challenges. The resolution asks for the work of the special procedures, the treaty bodies and other international human rights mechanisms to be taken into account in the study.

2. Political and public participation rights play a crucial role in the promotion of democratic governance, the rule of law, social inclusion and economic development, as well as in the advancement of all human rights. The right to directly and indirectly participate in political and public life is important in empowering individuals and groups, and is one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination. Participation rights are inextricably linked to other human rights such as the rights to peaceful assembly and association, freedom of expression and opinion and the rights to education and to information.

3. Obstacles to equal political and public participation exist in many contexts. These barriers may include direct and indirect discrimination on grounds such as race, colour, descent, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, disability, nationality or other status. Even when there is no formal discrimination in connection with political or public participation, inequalities in access to other human rights may impede the effective exercise of political participation rights.

4. International human rights mechanisms have observed that women, indigenous peoples, minorities, persons with disabilities, human rights defenders, non-citizens and other marginalized or excluded individuals and groups are frequently unable to fully participate in political and public affairs on an equal basis. This disadvantage is heightened where multiple or intersecting grounds of discrimination are involved.[1]

5. The present study will begin with an overview of the scope of participation rights in international law. It will then look at restrictions on political and public participation rights and at discrimination as major barriers to equal participation. The concluding section of the study suggests some measures that could be taken to overcome the obstacles to equal political and public participation that have been identified.

II. The scope of rights to participate in political and public affairs

6. The right to participate on a basis of equality in public and political life is a central feature of the concept of inclusive democracy.[2] The effective participation of all individuals and groups in political and public affairs underpins the realization of human rights and forms a central component of rights-based strategies aimed at eradicating discrimination and inequalities (A/HRC/13/23, para. 28).

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[1] See, for example, A/HRC/13/23, para. 56; Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 (2010), para. 18; and Committee on the Elimination of Racial Discrimination, General Recommendation No. 25 (2000).

[2] See the Universal Declaration of Human Rights, article 21; Human Rights Committee, General Comment No. 25 (1996), para. 21; and A/HRC/22/29, paras. 7–9.

7. Article 25 of the International Covenant on Civil and Political Rights, as well as the interpretive General Comment and jurisprudence adopted by the Human Rights Committee, define the obligations of States parties in connection with the right to take part in the conduct of public affairs, vote and be elected at genuine periodic elections, and have equal access to public service positions. Conditions and restrictions on direct and indirect political and public participation are permitted under international human rights law only when these are objective, reasonable and non-discriminatory.[3]

8. A number of other international human rights instruments also contain specific guarantees in relation to equal rights to political and public participation. These include the Universal Declaration of Human Rights (art. 21); the International Covenant on Economic, Social and Cultural Rights (art. 8); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (c)); the Convention on the Elimination of All Forms of Discrimination Against Women (arts. 7 and 8); the Convention on the Rights of the Child (art. 15); the Convention on the Rights of Persons with Disabilities (arts. 4 (3), 29, 33 (3)); the International Convention on the Protection of All Migrant Workers and Members of Their Families (arts. 41 and 42); the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (art. 2 (2)); the United Nations Declaration on the Rights of Indigenous Peoples (arts. 5 and 18); the Durban Declaration and Programme of Action (art. 22); the Declaration on the Rights to Development (arts 1.1, 2 and 8.2); and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (art. 8). At the regional level, equal political rights are protected in several instruments, including Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3), the American Convention on Human Rights (art. 23) and the African Charter on Human and Peoples' Rights (art. 13).

A. Electoral rights: the right to vote and to stand for elective office

9. The principle of universal and equal suffrage for all adult citizens constitutes one of the cornerstones of modern democracies. The importance of inclusivity, political pluralism and equality is underlined in Article 25 (b) of the International Covenant on Civil and Political Rights, which recognizes the right of every citizen "[t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage".

10. At the time that the Covenant was adopted, most States agreed that the scope of "universal" suffrage could be subjected to reasonable restrictions that allowed certain individuals or groups such as children, non-citizens, persons lacking legal capacity, prisoners and convicted felons to be deprived of political rights. More recently, however, human rights mechanisms have stated that wide-reaching restrictions or deprivations of electoral rights may not be compatible with guarantees of equality and non-discrimination under international law.[4]

11. The electoral rights guaranteed in article 25 (b) cover direct and indirect forms of political participation in all levels of government. Direct participation includes casting a

[3] Human Rights Committee, General Comment No. 25, paras. 3–4.

[4] See, for example, Committee on the Rights of Persons with Disabilities, General Comment No. 1 (2014); Human Rights Committee, Communication No. 1410/2005; CCPR/C/USA/CO/3 and Rev.1; and the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, article 42. See also Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl am Rhein, Engel, 2005), p. 576.

vote in a referendum or in a popular assembly with a decision-making mandate or participating in public affairs as an elected representative. Indirect participation refers to the election of freely chosen representatives in genuine, periodic elections based on universal suffrage and held by secret ballot, as well as influencing decision-making through public debate, within civil society organizations or through dialogue with elected representatives.

12. The Human Rights Committee has interpreted the obligations of States parties under article 25 (b) as requiring that positive measures be taken to ensure the full, effective and equal enjoyment of electoral rights as well as the freedoms of expression, information, assembly and association which are "essential conditions for the effective exercise of the right to vote and must be fully protected".[5]

13. Human rights mechanisms have emphasized that appropriate steps must be taken by Governments to promote and protect voting rights without any discrimination. These measures may include the facilitation of voter registration and the provision of electoral information and voting papers in a range of accessible formats and languages.[6] Steps should also be taken to ensure that the rights of persons with disabilities, people with reduced mobility and people with limited freedom of movement are taken into account in the design and implementation of voting systems.[7] Administrative restrictions, such as proof of residence or identity documentation requirements that might directly or indirectly prevent certain groups of citizens from exercising voting rights, should be removed.[8]

14. With regard to the implementation of the equal right and opportunity to stand for public office, which ensures that electors have a free choice of candidates, the Human Rights Committee has noted that "[a]ny restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria".[9] Positive measures must be taken by States to ensure that the criteria for candidacy are reasonable and non-discriminatory. Discrimination against eligible candidates for public office on grounds such as education, residence or descent or political affiliation is prohibited.[10]

15. In some contexts, candidates for elective office may face discrimination, including harassment and violations of rights to freedom of assembly and association, violence and even criminal law sanctions. These forms of discrimination have been observed in relation to candidates for elective office who advocate for the rights of women, trade unions, minorities, lesbian, gay, bisexual, transgender and intersex persons and other marginalized groups (see A/HRC/23/50, paras. 64–65, and A/HRC/26/29).

16. Any abusive or discriminatory interference with the registration of voters or candidates for public office and other elements of the electoral process should be prohibited by criminal law.[11] Effective access to justice and appropriate remedies should also be guaranteed for people who have been deprived of their political rights.[12]

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[5] Human Rights Committee, General Comment No. 25, paras. 12, 26 and 27.

[6] *Ibid.*, paras 11–12 and 20.

[7] Committee on the Rights of Persons with Disabilities, General Comment No. 1.

[8] Human Rights Committee, General Comment No. 25, para. 11.

[9] *Ibid.*, para. 15.

[10] *Ibid.*

[11] *Ibid.*, para. 11.

[12] *Ibid.*, paras. 10–13.

B. Participation in the conduct of public affairs

17. The Human Rights Committee has interpreted "[t]he conduct of public affairs" in article 25 (a) of the International Covenant on Civil and Political Rights as "a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration and the formulation and implementation of policy at international, national, regional and local levels." The means through which the right to participate in the conduct of public affairs is exercised by individual right holders should be established in national constitutions and other laws.[13]

18. The Committee on the Elimination of Discrimination against Women has also characterized political and public participation as a "broad concept", which refers to the exercise of political power and the formulation of policy at all levels. The Committee notes that the right includes participation in civil society through public boards and local councils, political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life.[14]

19. The Independent Expert on minority issues stated in her 2010 report to the Human Rights Council that public participation "comprises the right to take part in the conduct of public affairs, the right to vote and to be elected, and to have access to public services. Moreover, it entails participation in governmental bodies, the judiciary and other agencies of the criminal justice system, decentralized and local forms of government, consultation mechanisms, as well as through cultural or territorial autonomy arrangements" (A/HRC/13/23, para. 32).

20. The Independent Expert on minority issues further stated that for public and political participation to be considered effective, positive measures must be taken by States to enable full and equal political and public participation by all social groups (*ibid.*, paras. 52–53). The impact of these measures should be assessed in relation to the individuals and groups concerned as well as on the society as a whole, and "States must also ensure that the participation of minority representatives has a substantial influence on decisions which are taken" (*ibid.*, para 53).

21. Increasingly, international human rights mechanisms are acknowledging the rights of all people to be fully involved in and to effectively influence public decision-making processes that affect them. These public participation rights encompass the rights to be consulted at each phase of legislative drafting and policymaking, to voice criticism and to submit proposals aimed at improving the functioning and inclusivity of all governmental bodies engaged in the conduct of public affairs.[15] This wider interpretation of the right to political and public participation is particularly apparent in relation to the rights of persons with disabilities and in connection with indigenous peoples, minorities and the role of civil society organizations.[16]

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[13] *Ibid.*, para. 5.

[14] CEDAW, General Recommendation No. 23 (1997), para. 5.

[15] In addition to the jurisprudence of the Human Rights Committee see, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 21 (2009), para. 55 (e).

[16] See, for example, the United Nations Declaration on the Rights of Indigenous Peoples, article 19; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, article 2; A/HRC/18/42; A/66/288, paras. 77–86; A/HRC/19/36; and A/HRC/16/44/Add.2, para. 106.

C. Human rights linked to participation: the freedoms of assembly, association and expression and the rights to information and education

22. All human rights are indivisible, interrelated and interdependent. There are, however, several human rights that play a direct role in supporting and enabling equal and inclusive participation in political and public affairs.[17] The freedoms of peaceful assembly and association, opinion and expression and the rights to information and education are closely linked to the realization of rights to participate in political and public life. Discrimination and other barriers to the full realization of these supporting rights will, therefore, undermine efforts to ensure the equal enjoyment of other political and public participation rights.

23. The freedom of peaceful assembly includes the right to hold meetings, sit-ins, strikes, rallies, events or protests and encompasses virtual assemblies that take place online.[18] Peaceful assemblies "play a vibrant role in mobilizing the population and in formulating grievances and aspirations, facilitating the celebration of events and, importantly, in influencing States' public policy" (A/HRC/20/27, para. 24).

24. Freedom of association covers the right to form and join organizations, political parties, trade unions and other civil society associations concerned with political and public affairs.[19] The important role of civil society actors – particularly those that advocate for human rights, including the rights of minorities or marginalized groups – in the promotion and protection of all human rights is acknowledged in a number of human rights instruments as well as in the practice of the international human rights mechanisms.[20] It has been observed that the activities of civil society organizations and associations concerned with issues of public interest have been subjected to discriminatory restrictions related to registration requirements or sources of financing (see A/HRC/23/39 and A/HRC/26/29).

25. Restrictions on freedoms of peaceful assembly and association are frequently tightened during electoral periods or in situations of political transition or social conflict. As the Special Rapporteur on freedom of peaceful assembly and association pointed out, these contexts may result in prohibitions on peaceful assembly and association as well as the harassment and intimidation of individuals engaged in civic activism (A/HRC/20/27, paras. 22–23).

26. The right to freedom of expression is guaranteed in article 19 of the International Covenant on Civil and Political Rights. This right encompasses the freedom to debate

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[17] Human Rights Committee, General Comment No. 25, para. 8: "Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association."

[18] Human Rights Committee, General Comment No. 34 (2011), para. 12; and A/66/290.

[19] See for example, International Covenant on Civil and Political Rights, article 22; International Covenant on Economic, Social and Cultural Rights, article 8 (1)(a); article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women; and International Labour Organization (ILO) Convention concerning Freedom of Association and Protection of the Right to Organise No. 87 (1948).

[20] See Human Rights Council resolutions 15/21 (2010), 21/16 (2012) and 24/5 (2013); and Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 2011, available from http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CommentarytotheDeclarationonHumanRightsDefenders.aspx.

public affairs, hold peaceful assemblies and meetings, criticize and oppose government actions, publish political material, campaign for election and advertise political ideas.[21]

27. Freedom of expression also includes the right to seek and receive State-held information, which should be provided without the need to prove a direct interest or personal involvement.[22] The right to freedom of expression has been read as entailing positive obligations for States to publish and widely disseminate documents and information of significant public interest such as the content of policies and decisions affecting the public, or operational information concerning the functioning of public bodies (see E/CN.4/2000/63, para. 44). There are also positive obligations to guarantee easy, prompt, effective and practical access to government information.[23]

28. The existence of independent and diverse media sources, able to comment on and inform public opinion on political issues without censorship or restraint, has been recognized by international human rights mechanisms as an essential underlying guarantee that supports the right to political participation.[24] The public also has a right to receive media output free from any interference.[25]

29. The right to education is recognized in virtually all international and regional human rights instruments. The role of the right to education in ensuring access to other human rights, including rights to participate in political and public affairs, has been repeatedly emphasized. Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights provides that one of the objectives of education is to "enable all persons to participate effectively in a free society". The Committee on Economic, Social and Cultural Rights notes in its General Comment No. 13 (1999) that the realization of the right to education is essential for the promotion of human rights and democracy in that it enables all people to fully participate in their communities.

30. The mutually reinforcing nature of the human rights closely linked to political and public participation rights means that any measures directed towards guaranteeing equality in relation to electoral and other public participation rights must also be accompanied by strategies to ensure the full implementation of these supporting human rights.[26]

III. Restrictions on political participation rights

31. The Human Rights Committee has noted on several occasions that the right to vote and to stand for election within the meaning of article 25 of the International Covenant on Civil and Political Rights "is not an absolute right and that restrictions may be imposed on it provided they are not discriminatory or unreasonable".[27] With regard to other political rights, such as the freedoms of assembly and association, opinion and expression, any restrictions must be prescribed by law, necessary and proportionate in the circumstances. It has been emphasized by several international human rights mechanisms that restrictions should remain the exception rather the rule, and that these limitations should never impair the essence of the right at issue (A/HRC/20/27 and A/66/290).

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[21] Human Rights Committee, General Comment No. 25, para. 26, and General Comment No. 34; and A/66/290.

[22] See Human Rights Committee, Communication No. 1470/2006, paras 7.4–7.6.

[23] Human Rights Committee, General Comment No. 34, para. 19.

[24] Human Rights Committee, General Comment No. 25, para. 25.

[25] Human Rights Committee, General comment No. 34, para. 13.

[26] Human Rights Committee, General Comment No. 25, paras. 12, 26 and 27.

[27] Human Rights Committee, Communication No. 932/2000. See also Communications No. 2155/2012, No. 1744/2007, No. 500/1992, No. 44/1979; and General Comment No. 25, paras. 4, 10, 11 and 14.

A. Unreasonable and discriminatory restrictions on political participation rights

32. Illegitimate restrictions on rights to political and public participation constitute an important barrier to the equal exercise of political rights. In its General Comment No. 25, the Human Rights Committee stated that it would, for example, be "unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements" and that membership of a political party "should not be a condition of eligibility to vote, nor a ground of disqualification" (para. 10).

33. Limiting political participation on the grounds of intellectual or psychosocial impairment, the application of linguistic requirements for candidates for public office or the automatic disenfranchisement of detainees, convicted felons or people under guardianship have also been found by human rights mechanisms to constitute unreasonable and discriminatory restrictions on the exercise of political and public participation rights.[28]

B. Non-citizens and political participation

34. Article 25 of the International Covenant on Civil and Political Rights applies only to citizens. States are free to establish the requirements for the granting of citizenship; however, under international human rights law, these conditions should be non-discriminatory, objective and reasonable.[29]

35. International human rights mechanisms have reiterated that overly restrictive and/or discriminatory requirements for obtaining citizenship may impede effective participation in political and public affairs (see A/HRC/17/33, para. 65, and CERD/C/EST/CO/7). The mechanisms have called on States to take measures to ensure that citizenship is not unduly denied to minorities, long-term residents, foreign family members of citizens, stateless persons and other groups.[30] States have also been requested to remove restrictions on political rights based on the mechanism through which citizenship was acquired – by naturalization, by descent or by birth (see CCPR/CO/69/KWT and CERD/C/60/CO/11).

36. Examples of limited electoral rights being extended to non-citizens exist in a growing number of States (see CMW/C/AZE/CO/1, CMW/C/BOL/CO/1, CERD/C/BEL/CO/15, CERD/C/ISL/CO/18, CERD/C/CZE/CO/7 and A/HRC/13/23). The Independent Expert on minority issues has called on States to "consider allowing non-citizens belonging to minorities to vote, stand as candidates in local elections and be members of the governing boards of self-governing bodies, while making sure that access to citizenship is regulated in a non-discriminatory manner" (A/HRC/13/23, para. 64).

37. In addition to ensuring that the conditions for obtaining citizenship are not directly or indirectly discriminatory, States must also take measures to guarantee that non-citizens, including migrants (regardless of their migration status), non-permanent residents, refugees,

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[28] See Committee on the Rights of Persons with Disabilities, General Comment No. 1; CCPR/C/USA/CO/3 and Rev.1; and *Case of Söyler* v. *Turkey*, European Court of Human Rights, Application No. 29411/07, Decision of 17 September 2013; A/66/290. See also Nowak (footnote 4 above), p. 577, and Sarah Joseph *et al.*, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press, 2004).

[29] See Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 (2004), paras. 3–4, and A/HRC/17/33, para. 65.

[30] See Committee on the Elimination of Racial Discrimination, General Recommendation No. 30; A/HRC/13/25, para. 25; A/HRC/17/33, paras. 67 and 70. See also CERD/C/JOR/CO/13-17, para. 13, and CERD/C/THA/CO/1-3.

stateless persons and asylum seekers enjoy other participation rights such as the freedoms of association and peaceful assembly, expression and opinion, and the rights to information and education.[31] The Human Rights Committee has reiterated that protections for the rights of persons belonging to national or ethnic, religious and linguistic minorities under article 27 of the International Covenant on Civil and Political Rights apply to both non-citizens and citizens, except for those rights that are expressly limited to citizens.[32]

38. The Special Rapporteur on the rights to freedom of peaceful assembly and association argues that citizenship-related limitations on voting and other electoral rights make the promotion and protection of associated rights to political and public participation even more important. The Special Rapporteur states that "[a]n individual's lack of citizenship or legal status does not mean that she or he should have no voice whatsoever in the political, economic or social affairs of her or his country of residence … groups that are disenfranchised from mainstream political activities, such as voting and holding office, have an even greater need for alternative means to participate in the public sphere" (see A/HRC/26/29, para. 25).

39. The former Special Rapporteur on the human rights of migrants emphasized that while steps should be taken to facilitate the acquisition of formal citizenship, in order to be effective, a range of other measures to enable full participation in political life should complement these. The Special Rapporteur notes that "groups of migrant origin are frequently underrepresented in the political process even when most of their members are nationals" (A/HRC/17/33, para. 65).

40. International human rights mechanisms have also repeatedly called on States of origin to promote and facilitate participation in public and political life by citizens residing abroad through the adoption of specific legislative and awareness-raising programmes (see CMW/C/CHL/CO/1, para. 48, and A/HRC/20/24/Add.1, para. 72 (f)).

IV. Equality in the exercise of political participation rights

41. Non-discrimination and equality are fundamental principles of international human rights law and they are essential to the enjoyment of all human rights. Exclusion, marginalization and discrimination cannot be effectively addressed unless all people are provided with meaningful opportunities to exercise their rights to participate in political and public life and other related rights. Discriminatory restrictions on political and public participation rights serve to further marginalize and exclude different groups by depriving them of avenues for challenging and redressing the disadvantages they face (see A/HRC/26/29, para. 15).

42. Each of the core international human rights treaties explicitly prohibits both formal (*de jure*) and substantive (*de facto*) discrimination.[33] Discrimination has been defined as "any distinction, exclusion, restriction or preference which is based on any ground such as

[31] See Committee on the Elimination of Racial Discrimination, General Recommendation No. 30(2004), para. 35; International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, articles 26, 40 and 41; A/58/40(Vol. I), para. 79; CERD/C/JOR/CO/13-17, para. 13; CERD/C/CZE/CO/7; and CERD/C/EST/CO/7.

[32] See Human Rights Committee General Comment No. 23 (1994), para. 5.1.

[33] See, for example, International Covenant on Civil and Political Rights (arts. 2 and 26); International Covenant on Economic, Social and Cultural Rights (art. 2); International Convention on the Elimination of All Forms of Racial Discrimination (art. 1); Convention on the Elimination of All Forms of Discrimination Against Women (art. 1); and Convention on the Rights of Persons with Disabilities (art. 2).

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".[34]

43. Effective participation in public and political life is limited or prevented by formal and substantive discrimination on any of the above-mentioned grounds. The category of "other status" is non-exhaustive and has been interpreted by human rights mechanisms as including discrimination on the grounds of age, gender identity, disability, nationality and sexual orientation.[35] For example, human rights mechanisms have noted that criminal law sanctions that target lesbian, gay, bisexual and transgender persons, as well as discriminatory restrictions on their freedoms of peaceful assembly, association and expression result in severe limitations on their participation in political and public life (A/HRC/26/29).

44. Intersecting and multiple forms of discrimination have an especially devastating effect on the free exercise of participatory rights. International human rights mechanisms have noted cases of discrimination against Roma women who have been denied access to political and public participation rights on the grounds of their minority status, citizenship and gender.[36] The situation of indigenous people with disabilities provides another example of the negative impact of intersectional discrimination on political and public participation rights (E/C.19/2013/6). It has been noted that "[t]hese groups should not be viewed as monolithic or discrete … to understand the impact of discrimination on marginalized groups, it is important to recognize the different life experiences of the groups and individuals within the groups" (A/HRC/26/29, para. 13).

45. The obligation to prohibit and redress discrimination applies to formal and substantive, direct and indirect forms of discrimination in the public and private spheres. The Committee on Economic, Social and Cultural Rights notes that "[e]liminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations".[37] This means that, where necessary, States are obliged to adopt temporary special measures to attenuate or suppress the conditions that perpetuate substantive inequalities.[38] These temporary special measures could include the creation of quotas to enable underrepresented groups such as women, indigenous peoples, minorities or people with disabilities to exercise their rights to equal political and public participation within legislative and other public decision-making bodies.[39]

46. Violence that is directed against people on any prohibited grounds has also been characterized by the international human rights mechanisms as a form of discrimination that involves the violation of multiple human rights, including the rights to participate in

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[34] Human Rights Committee, General Comment No. 18 (1989), para. 7.

[35] Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009).

[36] See *ibid.*, para. 17; Committee on the Elimination of Racial Discrimination, General Recommendation No. 25; and A/60/38, para. 332. Indeed, even when Roma women hold citizenship, there are cases in which they have been denied political rights due to their gender and minority status.

[37] Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 8. The Committee on the Elimination of Racial Discrimination has held that "[t]o treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same", General Recommendation No. 32 (2009), para. 8.

[38] See the decision of the Human Rights Committee in Communication No. 943/2000 (2004).

[39] See A/HRC/23/50; A/HRC/13/25, para. 10; and Committee on the Rights of Persons with Disabilities, General Comment No. 1.

political and public affairs (see A/47/38(Supp), para. 9, and A/HRC/20/33, paras. 9–10). Different forms of violence, such as stigmatization, sexual harassment and intimidation, may be used to target human rights defenders and marginalized groups in order to prevent them from effectively exercising their rights to freely participate in political and public affairs (see A/HRC/26/29).

A. Women and equal political participation

47. The equal rights of women to participate in the public and political life of their countries are recognized in a number of international human rights instruments (see A/HRC/23/50, paras. 14 and 16). The most detailed explanation of the scope of women's political and public participation rights is provided in General Comment No. 23 of the Committee on the Elimination of Discrimination against Women, which interprets articles 7 and 8 of the Convention on the Elimination of All Forms of Discrimination against Women.

48. Article 7 of the Convention states that women's right to equal participation in political and public life encompasses the right to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; to participate in the formulation and implementation of government policy; to hold public office and to perform public functions at all levels of government; and to participate in non-governmental organizations and associations concerned with the public and political life of the country.

49. Article 8 refers to the obligations of States to take all appropriate measures to provide equal opportunities to women to represent their governments at the international level and to participate in the work of international organizations.

50. In its General Comment No. 23, the Committee on the Elimination of Discrimination against Women notes the slow progress in achieving gender equality and identifies a number of barriers to the equal political participation of women stating that "societies in which women are excluded from public life and decision-making cannot be described as democratic" (para. 14).

51. The Committee also observes that traditional cultural values and religious beliefs, an absence of social services, men's failure to equally share caring and household tasks, violence against women, women's economic dependence on men, gender stereotyping that offers a narrow vision of "women's political concerns" and the low level of representation of women in the professions from which politicians are recruited, have all played a significant part in the systematic exclusion of women from public life (paras. 10–12).

52. Women's rights to vote and to stand for elected office have been subjected to restrictions or conditions that either do not apply to men or that indirectly discriminate against women. Examples of these kinds of discriminatory restrictions include limiting voting or representational rights to individuals who have a specific level of education, who possess a certain amount of property or who are literate (A/HRC/23/50).

53. In addition, prevailing negative sociocultural stereotypes concerning women's political participation and discrimination against women in the family and community, including limitations on women's freedom of movement, assembly and association, may prevent women from exercising their rights to vote, to run for public office and to take an active part in political and public life.[40]

[40] Committee on the Elimination of Discrimination against Women, General Recommendation No. 23, paras. 10–12.

54. Institutional factors also contribute to the underrepresentation of women in political and public life at all levels, from local to international. For example, women are still rarely appointed to senior positions in government or within trade unions or political associations, and political parties often fail to nominate or provide financial assistance to female candidates, thereby denying them genuine opportunities to be elected. The global average number of women in national parliaments is 21 per cent, there are even fewer women Heads of State or Government and women account for only 27 per cent of judges worldwide (A/HRC/23/50, paras. 19, 21 and 22).

55. The Committee on the Elimination of Discrimination against Women and the Working Group on the issue of discrimination against women in law and in practice have made a number of recommendations addressed to States and other actors including political parties, civil society, trade unions and international organizations, on the measures that they should take to overcome impediments to women's equal public and political participation. These recommendations focus on the removal of barriers to participation, such as those resulting from violence and other types of discrimination, illiteracy, language, poverty and restrictions on women's freedom of movement and autonomy.

56. The Committee and the Working Group have reiterated that the positive obligations to promote the equal participation of women in all fields of public and political life, including in the formulation of government policy, may extend to the adoption of temporary special measures.[41] In this regard, the Working Group on the issue of discrimination against women in law and in practice observed in its 2013 report that "[t]he use of quotas to advance women's political representation and participation has increased in the past three decades and produced significant results when properly adapted to specific electoral and political systems" (A/HRC/23/50, para. 38).

57. States have adopted different forms of quota systems including political party and legislative quotas and reserved seats. However, if these measures are adopted in isolation and without adequate adaptation to the local context, they will usually not be sufficient to ensure equality in political and public participation.[42] The positive impact of increasing women's representation in public and political life will not be felt if women are not also empowered to actively participate in political discussions and to exercise a real influence in decision-making (A/HRC/23/50).

58. The Committee on the Elimination of Discrimination against Women and the Working Group on the issue of discrimination against women in law and in practice have also emphasized that the recruitment processes used by government authorities and political associations should be open and transparent. Both mechanisms have further recommended that measures be taken by States to ensure that political parties and trade unions do not engage in discrimination against women, and to encourage them to promote and protect women's political and public participation rights. The importance of reliable monitoring mechanisms and the systematic collection of data on progress in achieving gender equality within public and political institutions has also been underscored.[43]

59. The Committee on the Elimination of Discrimination against Women has emphasized the obligations of States parties to adopt appropriate legislation, policies and other measures to effectively prevent, eliminate and remedy discrimination against women,

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[41] Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 (2004).

[42] Homa Hoodfar and Mona Tajali, *Electoral Politics: Making Quotas Work for Women* (London, Women Living under Muslim Laws, 2011).

[43] A/HRC/23/50; and Committee on the Elimination of Discrimination against Women, General Recommendation No. 23.

including intersectional forms of discrimination, in all areas of public and private life.[44] Violence and all other forms of discrimination against women and women's rights defenders should be promptly and efficiently investigated, prosecuted and remedied (A/HRC/23/50, paras. 64–65).

B. Racism, racial discrimination, xenophobia and related intolerance and equal political participation

60. Article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that States parties must undertake to prohibit and eliminate racial discrimination in the area of "[p]olitical rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service". In its General Recommendation No. 20 (1996), the Committee on the Elimination of Racial Discrimination stated that the onus is on States to demonstrate that any restrictions on the rights contained in article 5 of the Convention are not discriminatory in their purpose or effect.

61. The Durban Declaration and Programme of Action (DDPA) draws attention to the fact that racism and racial discrimination limit opportunities for political and public participation. In this regard, it urges States and encourages the private sector and international financial and development institutions, such as the World Bank and regional development banks, to promote the participation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance in economic, cultural and social decision-making at all stages, particularly in the development and implementation of poverty alleviation strategies, development projects, and trade and market assistance programmes. The DDPA further urges States to promote, as appropriate, the effective and equal access of all members of the community, especially those who are victims of racism, racial discrimination, xenophobia and related intolerance, to decision-making processes in society at all levels and, in particular, at the local level (DDPA, paras. 99, 115, 210 and 213).

62. Along with the strategies laid out in the DDPA, international human rights mechanisms have also called on parliaments, political parties and civil society organizations to actively combat the "political normalization and exploitation" of racial discrimination within their activities (E/CN.4/2006/54). In this context, it should be noted that article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination obliges States Parties to condemn all propaganda and any organizations that are based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.

C. Indigenous peoples and equal political participation

63. Indigenous peoples are among some of the most excluded, marginalized and disadvantaged social groups. Discrimination against indigenous peoples has had a negative impact on their ability to freely determine the direction of their own communities or to participate in decision-making on matters that affect their human rights.

[44] Committee on the Elimination of Discrimination against Women, General Recommendation No. 28.

64. The rights of indigenous peoples to participate in political and public life, including through the maintenance and creation of indigenous forms of governance, are well established in international law.[45] The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) contains specific provisions on the participation of indigenous peoples in all areas of public and political life.

65. The Expert Mechanism on the Rights of Indigenous Peoples notes that "[m]ore recently, the indigenous-rights discourse has seen increased focus on rights not only allowing indigenous peoples to participate in decision-making processes affecting them, but to actually control the outcome of such processes".[46]

66. The United Nations Declaration on the Rights of Indigenous Peoples contains more than 20 provisions related to the right of indigenous peoples to fully participate in political and public decision-making. Under articles 5, 18 and 19 of the Declaration, indigenous peoples have the right to participate in political life. The Declaration also stipulates that indigenous peoples have the right to self-determination and in exercising this right, they have the right to self-government in their internal affairs and the right to develop and maintain their own decision-making institutions (see articles 2–5 and 18).

67. Specific positive duties for States to ensure the effective participation by indigenous peoples in decision-making include those of consultation and cooperation with indigenous peoples and, in particular, the need to seek the "free, prior and informed consent" of indigenous peoples in relation to legislative and administrative measures that may affect them (art. 19).

68. In addition to the guarantees of equal participation for indigenous peoples in the broader public life of the State and in decision-making that specifically affects their rights, the participatory rights of indigenous peoples also have an "internal" dimension. This aspect relates to the promotion and protection of indigenous peoples' exercise of autonomy and self-government and to the maintenance of their own legal and justice systems (see A/65/264, paragraph 46).

69. The Secretary-General of the United Nations has made a number of recommendations addressed to the United Nations on the ways in which the Organization could better promote the participation of indigenous peoples' representatives in its different decision-making bodies as called for in article 41 of the United Nations Declaration on the Rights of Indigenous Peoples. The Secretary-General's report on ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them discusses barriers to indigenous participation within the United Nations system and observes that these include the limited resources of many indigenous groups and the fact that accreditation requirements for consultative status do not recognize the specificities of indigenous peoples' representatives who might not be organized as non-governmental organizations and often have their own governance bodies and institutions (A/HRC/21/24).

D. Minorities and equal political participation

70. Persons belonging to minority groups remain underrepresented in the political and public processes and governing institutions in most countries "because they are either actively and intentionally restricted from participation, inadvertently disadvantaged by a variety of laws or policies, or because there is a lack of political will in the larger society to

[45] See Human Rights Committee, General Comment No. 23, para. 7.

[46] Expert Mechanism on the Rights of Indigenous Peoples, Advice No. 2 (2011), para. 2.

dismantle structural barriers to the full equal participation of minorities (A/HRC/13/25, para. 6).

71. Inspired by article 27 of the International Covenant on Civil and Political Rights, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities sets out the rights of minorities and establishes that States have an obligation to respect, protect and promote those rights. It stipulates in its article 2.2 that "[p]ersons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life". This provision has been interpreted as including the rights relating to election and to being elected, the holding of public office and full participation in other political and administrative activities as well as through minority associations and free contacts both inside the State and across borders (E/CN.4/Sub.2/AC.5/2005/2, paras. 36–37).

72. In 2009, the Forum on Minority Issues addressed the question of the effective political participation of minorities and adopted a set of recommendations aimed at promoting the full participation of minorities in public and political life (A/HRC/13/25, para. 10). These recommendations include effective efforts by Governments to end discrimination through, *inter alia*, the creation of independent monitoring and complaints mechanisms to prevent discrimination in voting, vote fraud, intimidation and similar acts that inhibit effective participation in electoral activities.

73. Other mechanisms to support minority political participation involve the institution of proportional representation systems, the adoption of temporary special measures to encourage political parties to provide genuine opportunities to candidates from minorities, and the enactment of positive measures to overcome specific difficulties such as illiteracy, language barriers, poverty or impediments to freedom of movement.

74. More wide-ranging measures are also recommended, such as policy statements from Governments on the values of diversity and non-discrimination, and the development of a national plan of action in association with minorities, which incorporates educational campaigns and temporary special measures to increase participation by minorities in public administration and other areas of public life.

75. The Forum on Minority Issues further agreed that consideration should be given, in appropriate circumstances, to mechanisms for devolving or sharing political power to enable minorities to have a significant and direct impact on matters that directly affect them. It was emphasized, however, that access to meaningful political power should not be dependent on one's status as a member of a minority group.

76. In 2012, the Secretary-General established the United Nations network on racial discrimination and protection of minorities. The network, which is coordinated by OHCHR, aims to enhance dialogue and cooperation between relevant United Nations departments, agencies, programmes and funds. During its first year of operation, the network developed a guidance note for the United Nations system on how to address racial discrimination and the protection of minorities in line with the Universal Declaration of Human Rights and other key standards, drawing from effective practices.[47] The guidance note and the action plan that was developed to facilitate its implementation highlight the need for institutional reforms that advance participation by minorities in decision-making and political processes, including within peace negotiations, transitional justice processes, environmental decision-making, electoral processes and in constitution-making.[48]

[47] Guidance Note of the Secretary-General on Racial Discrimination and the Protection of Minorities, March 2013.

[48] *Ibid.*

E. Persons with disabilities and equal political participation

77. Persons with disabilities have the right to fully participate, on a basis of equality, in public and political affairs. Guarantees of participatory rights, while important in and of themselves, are also crucial to redressing the exclusion, marginalization and disadvantages that persons with disabilities continue to face in all areas of social, economic, cultural and political life.[49]

78. The Convention on the Rights of Persons with Disabilities establishes "[f]ull and effective participation and inclusion in society" as one of the general principles (art. 3 (c)) that are used to guide the interpretation and implementation of all of the rights and obligations contained in the Convention.

79. Article 29 of the Convention on the Rights of Persons with Disabilities specifically deals with the equal rights of persons with disabilities to participate in political and public life. The article covers both the right and the opportunity of persons with disabilities to vote and to be elected as well as the obligations of States parties to create an enabling environment in which persons with disabilities can take part in all aspects of public and political life, including through membership in organizations of persons with disabilities at the local, regional, national and international levels.

80. The Committee on the Rights of Persons with Disabilities, in its General Comment No. 1, highlights discriminatory restrictions of legal capacity, which have effectively excluded persons with disabilities from political participation, especially the right to vote. This form of discrimination has been frequently observed in relation to people with psychosocial or intellectual impairments (A/HRC/19/36, para. 70). The Committee notes that a "person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising all of their political rights, including the right to vote, the right to stand for election and the right to serve as a member of a jury".[50]

81. The Committee goes on to underline the positive obligations for States under article 29 of the Convention, and these are interpreted as including the creation and promotion of accessible and non-discriminatory voting and electoral procedures, as well as providing support for the choices of people with disabilities in voting by secret ballot. The Committee further recommends that "States parties guarantee the right of persons with disabilities to stand for elections, to hold office effectively and to perform all public functions at all levels of government, with reasonable accommodation and support, where desired, in the exercise of their legal capacity".[51]

82. Article 29 of the Convention also protects the rights of persons with disabilities to participate in the civil society organizations that represent them. This right is complementary to the provision in article 33 (3) that gives an active role to organizations of persons with disabilities and broader civil society in monitoring the Convention at the national level (A/HRC/13/29).

F. Civil society organizations, human rights defenders and equal political participation

83. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental

[49] Convention on the Rights of Persons with Disabilities, article 4 (3).
[50] Committee on the Rights of Persons with Disabilities, General Comment No. 1, para. 48.
[51] *Ibid.*, para. 49.

Freedoms contains a number of provisions that relate to the rights to participate in public and political affairs. Article 8 (2) of the Declaration provides that "[t]his includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms".

84. The international human rights mechanisms have drawn attention to the key role played by human rights defenders and civil society organizations in the promotion and protection of all human rights, including the rights to political and public participation.[52] In many contexts, however, human rights defenders and civil society organizations have been subjected to forms of discrimination such as onerous administrative requirements, criminalization of their activities, stigmatization, harassment and other forms of violent reprisals, which leave them unable to freely exercise their rights to contribute to public debate on issues of concern.[53]

85. Discrimination, unequal treatment, harassment and restrictions of the rights to public and political participation are often directed against human rights defenders and civil society organizations advocating for the rights of marginalized groups.[54] Those most at risk include people and organizations engaged in defending the rights of persons with disabilities, youth and children, women, lesbian, gay, bisexual, transgender and intersex people, members of minority groups, indigenous peoples, internally displaced persons, and non-nationals such as refugees, asylum seekers and migrant workers (A/HRC/26/29, paras. 10–11).

86. Women human rights defenders are subject to the same types of risks as other human rights defenders but, as women, they are also targeted for or exposed to gender-specific threats and gender-specific violence. When women human rights defenders engage to promote women's political participation, they are seen as challenging traditional notions of gender roles and, as a result, they can be stigmatized and subjected to discrimination and violence.

87. Several of the United Nations human rights mechanisms have examined the rights of civil society organizations and human rights defenders to participate, without any discrimination, in the conduct of public and political affairs. Effective participation includes the right of civil society actors to have their views incorporated within legislative and policymaking processes and to freely voice criticism or to submit proposals to improve the functioning of public authorities.[55]

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[52] Human Rights Council, Interactive discussion on protecting civil society space to guarantee human rights, March 2014.

[53] Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (see footnote 20 above); and A/HRC/13/22.

[54] *Ibid.*

[55] See Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (footnote 20 above); and A/HRC/16/44/Add.2, para. 106.

V. Conclusion and recommendations

88. **The right to participate in political and public affairs is a key human right in itself as well as a right that enables the full implementation of many other human rights. It plays an important role in identifying and remedying discrimination in that it helps to ensure that the views and interests of all members of society are reflected in legislation, policies and other forms of public decision-making.**

89. **The rights to political and public participation are broad in scope and range from electoral rights to equal access to public service and direct and indirect forms of participation in the conduct of public affairs at all levels, from the local to the international. The concept of political and public participation is evolving, and several international human rights mechanisms have recognized that participatory rights may now be read as encompassing the rights to be consulted and to be provided with equal and effective opportunities to be involved in decision-making processes on all matters of public concern.**

90. **Comprehensive legislation to entrench the principle of substantive equality within the national constitutional framework should be adopted, monitored and enforced. Discriminatory legislation should be repealed and all forms of discrimination, including multiple and intersectional discrimination, in public and private life, should be prohibited with effective access to justice guaranteed for all people who have suffered from discrimination. Steps should be taken to ratify and implement international human rights treaties, including those with individual petition or complaint mechanisms, and to ensure these are given effect within national laws.**

91. **Support should be provided for the creation of independent national human rights institutions based on the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). National human rights institutions should be competent to receive complaints, make legislative and policy recommendations and conduct monitoring and awareness-raising activities in relation to all forms of discrimination, including multiple and intersectional discrimination, in every area of public and private life.**

92. **Temporary special measures for underrepresented groups – including women, indigenous peoples, minorities and persons with disabilities – adapted to the national context and accompanied by other participatory programmes, should be enacted through legislation with a view to increasing equal participation in all aspects of political and public life.**

93. **Any restrictions on eligibility for citizenship and the exercise of political rights should be based on objective, reasonable and non-discriminatory criteria and these restrictions should only be applied in exceptional circumstances. To this end, discriminatory laws or regulations in relation to the conditions for acquiring or exercising rights connected to citizenship should be amended or repealed.**

94. **Legislation should be enacted to encourage independent, plural media services and to ensure that journalists, human rights defenders and civil society organizations are able to freely pursue their activities. Administrative requirements related to the registration and financing of civil society organizations, the conduct of peaceful assemblies and other activities connected to the exercise of political and public participation rights should be reviewed to ensure that they are not discriminatory and that they do not unduly limit the enjoyment of rights to participate in public affairs.**

95. **Information and educational materials in accessible formats and languages that present the political process as well as the related international human rights framework should be developed. Appropriate outreach activities aimed at effectively involving women, indigenous peoples, persons with disabilities, minorities and other marginalized groups in the design and implementation of communication strategies and campaigns on political and public participation should be undertaken.**

96. **Candidates for public office, parliaments and other public institutions, as well as politicians, should be engaged in order to promote awareness and debate about equality, human rights and inclusive policymaking and legislation.**

97. **The development of social media platforms and associated opportunities to freely take part in online activism has the potential to reduce inequalities in connection with political and public participation. States should foster and encourage the use of new and assistive technologies to improve access to political and public life for people with disabilities, restricted mobility or limited literacy, and other groups.**

98. **Data on political and public participation by women, indigenous peoples, persons with disabilities, minorities and other underrepresented groups should be systematically collected, disaggregated and analysed in order to inform policies and strategies to promote the effective participation of people from all social groups in public and political life.**

99. **Appropriate follow-up and support should be provided for the implementation of the Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities as well as other relevant recommendations on equal political participation and non-discrimination made by the human rights mechanisms.**

100. **Existing international platforms for the promotion of equal political and public participation rights, such as the Permanent Forum on Indigenous Issues, the Forum on Minority Issues and the World Forum for Democracy should be supported and extended. States and other stakeholders should seek to implement the recommendations on equal political and public participation made by these forums.**

101. **Specific strategies for the promotion and protection of political and public participation rights should be developed within the framework of international cooperation and assistance programmes, particularly in connection with States in transition. These programmes should be inclusive and focus, as a priority, on engaging with people from marginalized groups.**